

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 341 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

STATE OF GUJARAT

Versus

SULEMAN ALIMOHMED SADHI & ORS

Appearance:

Shri S.T. Mehta, Additional Public Prosecutor,
for the Appellant-State

Shri C.H. Vora, Advocate, for the Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 05/10/96

ORAL JUDGEMENT

The order passed by the learned Judicial Magistrate (First Class) at Nakhatrana on 27th January 1993 permitting composition of the offences inter alia the one punishable under sec. 326 of the Indian Penal Code, 1860 (the IPC for brief) in Criminal Case No. 448 of 1991 is under challenge in this appeal by leave of

this Court under sec. 378 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for brief).

2. The facts giving rise to this appeal need not be summarised in detail. It may be sufficient to note that the respondents herein were charged with the offences punishable under sections 326, 324 and 504 read with 114 of the IPC. The charge against them was framed on 26th June 1991 at Ex. 5 on the record of the trial court. The incident is stated to have occurred on 4th January 1991. No accused pleaded guilty to the charge. They were therefore required to be tried. It appears that the parties moved an application for composition of the offences on 8th January 1993 at Ex. 17 on the record of the trial court. By his order passed therebelow on 27th January 1993, the learned trial Magistrate permitted composition of the offences inter alia the one punishable under section 326 of the IPC. The aggrieved State Government has thereupon by leave of this Court invoked its appellate jurisdiction under sec. 378 of the Cr.P.C. for questioning the correctness of the aforesaid order passed by the learned trial Magistrate.

3. It is obvious that certain offences can be compounded under sec. 320 of the Cr.P.C. Sub-section (9) thereof is quite clear. It forbids or prohibits composition of any offence except as provided by this section. In that view of the matter, as rightly submitted by learned Additional Public Prosecutor Shri Mehta for the appellant-State, the offence punishable under sec. 326 of the IPC could not have been permitted to be compounded.

4. Ordinarily, the aforesaid submission made by learned Additional Public Prosecutor Shri Mehta for the appellant-State ought to be accepted and the impugned order ought to be set aside in view of sec. 320(9) of the Cr.P.C. It is however not desirable to do so for two very good reasons. It transpires from the elaborate order passed by the learned trial Magistrate that the offence under sec. 326 of the IPC could not be made out. In that case, prohibition contained in sec. 320(9) of the Cr.P.C. would not come in the way of composition of the offences.

5. Besides, the learned trial Magistrate has relied on the binding ruling of the Supreme Court in the case of Mahesh Chand and another v. State of Rajasthan reported in AIR 1988 SC 2111 in support of his permission to compound the offences inter alia the one punishable under sec. 326 of the IPC. In that case composition of the

offence punishable under sec. 307 of the IPC was permitted as a special case though it is not compoundable. At this juncture I think this will have to be treated as a special case. The incident giving rise to the criminal proceeding occurred on 4th January 1991 as transpiring from the charge at Ex. 5 on the record of the trial court. More than 5 1/2 years have rolled by since then. It is no use reopening the case for trial after passage of such a long period. It is no use reopening wounds which have come to be healed by passage of time. In that view of the matter, this case has to be treated as a special case for composition of the offence inter alia the one punishable under sec. 326 of the IPC in view of the aforesaid binding ruling of the Supreme Court.

5. In view of my aforesaid discussion, I am of the opinion that the impugned order passed by the learned trial Magistrate calls for no interference by this Court in this appeal.

6. In the result, this appeal fails. It is hereby dismissed.
